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upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

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AUTHORITY: Secs. 145, 161, 68 Stat. 942, 948, as amended (42 U.S.C. 2165, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); E.O.

10 CFR Ch. I (1–10 Edition)

10450, 3 CFR parts 1949–1953 COMP., p. 936, as amended; E.O. 10865, 3 CFR 1959–1963 COMP., p. 398, as amended; 3 CFR Table 4.; E.O. 12968, 3 CFR 1995 COMP., p.396.

SOURCE: 47 FR 38676, Sept. 2, 1982, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 10 appear at 70 FR 30897, May 31, 2005.

Subpart A—General Provisions

§ 10.1 Purpose.

(a) This part establishes the criteria, procedures, and methods for resolving questions concerning:

(1) The eligibility of individuals who are employed by or applicants for employment with NRC contractors, agents, and other individuals who are NRC employees or applicants for NRC employment, and other persons designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer of the NRC, for access to Restricted Data under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information;

(2) The eligibility of NRC employees, or the eligibility of applicants for employment with the NRC, for employment clearance; and

(3) The eligibility of individuals who are employed by or are applicants for employment with NRC licensees, certificate holders, holders of standard design approvals under part 52 of this chapter, applicants for licenses, certificates, and NRC approvals, and others who may require access related to a license, certificate, or NRC approval, or other activities as the Commission may determine, for access to Restricted Data under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, or for access to national security information.

(b) This part is published to implement the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Executive Order 10865, 25 FR 1583 (February 24, 1960) Executive Order 10450, 18 FR 2489

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(April 27, 1954), and Executive Order 12968, 60 FR 40245 (August 2, 1995).

[64 FR 15641, Apr. 1, 1999, as amended at 72 FR 49483, Aug. 28, 2007]

§ 10.2 Scope.

The criteria and procedures in this part shall be used in determining eligibility for NRC access authorization and/or employment clearance involving:

(a) Employees (including consultants) of contractors and agents of the Nuclear Regulatory Commission and applicants for employment;

(b) NRC licensees, certificate holders and holders of standard design approvals under part 52 of this chapter, applicants for licenses, certificates, and standard design approvals under part 52 of this chapter, and their employees (including consultants) and applicants for employment (including consulting);

(c) NRC employees (including consultants) and applicants for employment; and

(d) Any other person designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer of the Nuclear Regulatory Commission.

[47 FR 38676, Sept. 2, 1982, as amended at 64 FR 15641, Apr. 1, 1999; 72 FR 49483, Aug. 28, 2007]

§ 10.3 [Reserved]

§ 10.4 Policy.

It is the policy of the Nuclear Regulatory Commission to carry out its responsibility for the security of the nuclear energy program in a manner consistent with traditional American concepts of justice. To this end, the Commission has established criteria for determining eligibility for access authorization and/or employment clearance and will afford those individuals described in § 10.2 the opportunity for administrative review of questions concerning their eligibility for access authorization and/or employment clearance.

§ 10.5 Definitions.

Access authorization means an administrative determination that an individual (including a consultant) who is employed by or an applicant for em-

ployment with the NRC, NRC contractors, agents, and licensees of the NRC, or other person designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer, is eligible for a security clearance for access to Restricted Data or National Security Information.

Commission means the Nuclear Regulatory Commission of five members or a quorum thereof sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974, or its designee.

Eligible or *Eligibility* means both initial eligibility and continued eligibility of an individual for access authorization and/or employment clearance.

Employment Clearance means an administrative determination that an individual (including a consultant) who is an NRC employee or applicant for NRC employment and other persons designated by the Deputy Executive Director for Information Services and Administration and Chief Information Officer of the NRC is eligible for employment or continued employment pursuant to subsection 145(b) of the Atomic Energy Act of 1954, as amended.

Hearing Counsel means an NRC attorney assigned by the General Counsel to prepare and administer hearings in accordance with this part.

Hearing Examiner means a qualified attorney appointed by the Director, Office of Administration, to conduct a hearing in accordance with this part.

National Security Information means information that has been determined pursuant to Executive Order 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

NRC Personnel Security Review Panel means an appeal panel appointed by the Deputy Executive Director for Information Services and Administration and Chief Information Officer and consisting of three members, two of whom shall be selected from outside the security field. One member of the Panel shall be designated as Chairman.

Personnel Security Review Examiners are persons designated by the Executive Director for Operations to conduct